IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10819 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAULESHBHAI H

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10819 of 1994

MR SH SANJANWALA for Petitioners.

Mr. KT Dave, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 09/04/2004

ORAL JUDGEMENT

The present Special Civil Application is filed under Article 226/227 of the Constitution of India challenging the order passed by Assistant Collector, Viramgam Prant, Ahmedabad, dated 4th December 1991 confiscating the land of the petitioners bearing Survey No. 185/2 situate at Bodakdev Village, Taluka-Dascroi,

District-Ahmedabad, under Section 65 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as 'the Act').

2. A show cause notice was issued on the petitioners by the Assistant Collector, Viramgam Prant, Ahmedabad, dated 27th June 1991 exercising powers under Section 65 of the said Act calling upon the petitioner to show cause why the land bearing Survey No. 185/2 situate at Village Bodakdev, Taluka-Dascroi, District-Ahmedabad should not be confiscated as the land in question had remained unused and uncultivated for more than two years. That the petitioners appeared before the authority and filed a reply denying the allegations levelled in the show cause notice. It was emphatically contended by them that in fact the land is being cultivated and at the relevant time grass was there. Inspite of the aforesaid fact, the Assistant Collector, Viramgam Prant by his judgment and order dated 4.12.1991 passed an order of confiscation of the land in question under Section 65 of the Act by holding that the land in question was kept unused and uncultivated for more than 4 years. It is pertinent to note that in the Village Form No. 7/12 the crops which were shown was Juwar, Tuver etc., upto 1989. Inspite of that the Assistant Collector held that the Entry in the Pani Patrak was not correct and passed the order of confiscation of land under Section 65 of the Act.

3. That being aggrieved and dissatisfied with the said order passed by the Assistant Collector for confiscation of the land in question exercising power under Section 65 of the Act, the petitioners preferred Revision Application No. TEN.BA No. 1/92 and the Gujarat Revenue Tribunal by its judgment and order dated 25th July 1994 dismissed the said revision application by holding that the Tribunal has no jurisdiction and the same was returned to the petitioners for presentation before appropriate forum.

4. Thereafter, the present Special Civil Application is filed before this Court challenging the order passed by the Assistant Collector, Viramgam Prant, Ahmedabad, dated 4.12.1991 by which the land in question has been confiscated exercising the power under Section 65 of the Act.

5. Shri R.S. Sanjanwala, learned advocate appearing for the petitioners had submitted that the Assistant Collector exercising the power under Section 65 of the Act has no jurisdiction to pass an order of confiscation of the land and the maximum power that can be exercised

is to take management and that too for a period not more than 10 years. Under the circumstances he has submitted that the order passed by the Assistant Collector dated 4.12.1991 for confiscation of the land in question for all times to come is erroneous and against the provisions of Section 65 of the Act and requested to quash and set aside the same. Shri Sanjanwala has relied upon the judgment of this Court rendered in Special Civil Application No. 448 of 1982 and judgment of the Hon'ble Supreme Court in Ramanlal Gulabchand SHah etc. vs. The State of Gujarat and Others, reported in AIR 1969 S.C. Page 168 in support of his aforesaid contention.

6. Shri KT Dave, learned AGP appearing on behalf of the respondents has supported the order passed by the Assistant Collector dated 4.12.1991. He submitted that there is a finding of fact given by the Assistant Collector with regard to nonuser of the land in question for more than 4 years. Consequently therefore the authority has rightly exercised his power under Section 65 of the Act.

7. I have heard the learned counsel appearing for both the parties. Section 65 of the Act reads as under;

65. (I) If it appears to the (State) Government that for any two consecutive years, any land has remained uncultivated 2 (or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control) the 1 (State) Government may, after making such inquiry as in thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

3(IA) The assumption of management of land under sub-section (I) on the ground that the full and efficient use of the land has not been made for the purpose of agriculture shall be for such period as the State Government may, from time to time, fix so, however, that such period shall not exceed ten years in the aggregate.)

(2) On the assumption of the management, such land shall vest in the 1 (State) Government during the continuance of the management and the provisions of Chapter IV shall mutatis mutandis apply to the said land;

4 (Provided that the manager may in suitable cases give such land on lease as rent even equal to the amount of its assessment;

Provided further that if the management of the land has been assumed under sub-section (I) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed."

Considering the aforesaid provisions, it is clear that if it is found by the State Government that for any two consecutive years any land had remained uncultivated, Government may after making such inquiry as it thinks fit declare that the management of such land shall be assumed and that the assumption of management of land shall not exceed 10 years in the aggregate. Thus, under Section 65 of the Act, the State Government has no power or jurisdiction to confiscate the land in question permanently and now considering the order passed by the Assistant Collector dated 4.12.1991 the Assistant Collector has passed an order of confiscation of the land in question permanently and therefore the order passed by the Deputy Collector in confiscating the land in question is ex facie illegal and against the provisions of Section 65 of the Act. This Court, in Special Civil Application No. 448 of 1982, has taken the similar view and has held that under Section 65 of the Act, there is no power of confiscation and the maximum power that can be had is the power to take the management and no notice was given with regard to the management and therefore the order cannot be allowed to stand. In the present case also, even if we look to the notice dated 27th June 1991 by which the petitioner was called upon to show cause, there is no reference to taking over of management of the land in question and the notice was given with regard to confiscation of the land in question and the said notice was given under Section 65 of the Act. Therefore, even the show cause notice itself was beyond the scope of Section 65 of the Act and therefore as held by this Court, the order passed by the Assistant Collector, Viramgam Prant, Ahmedabad , dated 4.12.1991 in confiscating the land in question, requires to be quashed and set aside.

8. Considering the aforesaid facts and circumstances, the Assistant Collector has fallen in

error in passing the order of confiscation of land in question exercising the power under Section 65 of the Act, and this Court (Coram: M.R. Shah, J.) has also taken the similar view in Special Civil Application No. 12120 of 1993. In that view of the matter, the impugned order passed by the Assistant Collector, Viramgam Prant, Ahmedabad, dated 4.12.1991 is hereby quashed and set aside. Rule is made absolute. Interim relief stands vacated with no order as to costs.

rmr. [M.R. Shah, J.]